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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

1 Lead Plaintiff Jonathan Davis and Plaintiff Roei Azar (collectively, “Plaintiffs”) and Defendants  
 2 Yelp Inc. (“Yelp” or the “Company”), Jeremy Stoppelman, Charles “Lanny” Baker, and Joseph “Jed”  
 3 Nachman (“Individual Defendants”) (collectively “Defendants”) submit this Joint Case Management  
 4 Statement pursuant to the Standing Order for All Judges in the Northern District of California dated  
 5 January 17, 2017 and Civil Local Rule 16-9.

6 **I. JURISDICTION AND SERVICE**

7 This is a putative securities class action lawsuit alleging violations of Sections 10(b) and 20(a)  
 8 of the Securities and Exchange Act of 1934 (“Exchange Act”). This Court has jurisdiction over the  
 9 subject matter of this action pursuant to 28 U.S.C. § 1331, which confers upon the Court original  
 10 jurisdiction over all civil actions arising under the laws of the United States, as well as Section 27 of the  
 11 Exchange Act, 15 U.S.C. § 78aa. There are no disputes regarding personal jurisdiction or venue, and  
 12 Defendants have been served or have waived service. *See Doc. 21.*<sup>1</sup>

13 **II. STATEMENT OF FACTS**

14 **A. Plaintiffs’ Statement**

15 Yelp is a leading online review platform for consumers to share their everyday local business  
 16 experiences with other consumers by posting reviews, tips, photos and videos, and to engage directly  
 17 with businesses. The Company earns revenue from its advertising products, transactions and other  
 18 services. Yelp’s advertising revenues were generated through three sales channels, its core local  
 19 advertisers, national advertisers, and self-serve advertisers. Yelp’s core local channel is focused on  
 20 small and medium sized businesses who are directly engaged by its sales force, who are focused on  
 21 adding new customers and are compensated by advertising sold in a given period. This segment  
 22 accounted for approximately 70% of the Company’s advertising revenues in 2016.

23 In 2015, Yelp began to transition from charging advertisers for every 1,000 ad impressions  
 24 (“CPM”) to a cost-per-click (“CPC”) basis, allowing the Company to better track the effectiveness of  
 25 advertising. In early 2016, the Company signed up a record number of customers to year-long

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26  
 27 <sup>1</sup> All “Doc.” notations refer to docket entries on the Court’s Electronic Case Filing system.  
 28

1 contracts, which discouraged termination through hefty fees of up to \$750. Retaining customers with  
 2 expiring contracts was critical to Yelp's bottom line since Yelp only paid its sales force commission to  
 3 secure new accounts, not to retain accounts whose contract had expired, thereby increasing the  
 4 Company's margins from 48% in a customer's first year to 95% in its second. The Company claimed it  
 5 was able to measure advertiser engagement, which correlated to return on investment ("ROI"), and  
 6 return on investment had a determinative impact on retention.

7 Plaintiffs allege that throughout the Class Period, Defendants made materially false and  
 8 misleading statements regarding the Company's business and operational success, telling investors they  
 9 were "not alarmed in any way" about customer retention levels, when in fact, for at least six weeks  
 10 before Defendants issued guidance, the Company was experiencing churn higher than its historical and  
 11 expected range and a recovery team was put into place to curb further losses. Specifically, Plaintiffs  
 12 allege that Defendants made false and/or misleading statements and/or failed to disclose that: (1) a  
 13 cohort of less engaged advertisers who signed up for annual contracts in 1Q'16 as the Company was  
 14 transitioning from CPM to CPC saw less ROI and were terminating their contracts at higher than  
 15 anticipated rates. The Company became aware of the extent of this problem in January and February of  
 16 2017 and implemented a recovery team to improve engagement and retention amongst this cohort; (2)  
 17 as a result of the above, the Defendants' statements boasting of Yelp's success were materially false  
 18 and misleading; and (3) the Company's 2017 financial guidance lacked a reasonable basis and was  
 19 materially false and misleading.

20  
 21 On May 9, 2017, Yelp announced that the Company had experienced substantial weakness in  
 22 revenue retention in late 2016 and January 2017. On this news, shares of Yelp declined 18% on May  
 23 10, 2017. Plaintiffs alleges that as a result of Defendants' wrongful acts and omissions – and the  
 24 precipitous decline in the market value of the Company's securities – Plaintiffs and other Class  
 25 members have suffered significant losses and damages.

## **B. Defendants' Statement**

The amended complaint in this action (Doc. 29), which includes the allegations set forth above, does not state a securities fraud claim because the vast majority of the purportedly false statements are forward-looking statements accompanied by meaningful cautionary language, which are protected by the PSLRA statutory safe harbor, 15 U.S.C. § 78u-5, and because Plaintiffs have failed to otherwise plead falsity, scienter, and loss causation with particularity.

Defendants deny the allegations of the complaint and have filed a motion to dismiss the amended complaint with prejudice, along with an accompanying request for judicial notice, which have been fully briefed (Docs. 31-35, 37-38). The motion to dismiss is scheduled for oral argument on September 20, 2018.

### III. LEGAL ISSUES

The legal issue in dispute is whether Defendants violated Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated thereunder, 17 C.F.R. § 240.10b-5, and whether the Individual Defendants violated Section 20(a) of the Exchange Act, 15 U.S.C. §§ 78t(a).

## IV. MOTIONS

On April 27, 2018, the Court granted the motion for appointment of lead plaintiff and appointed Jonathan Davis as Lead Plaintiff. Doc. 23. The Court also appointed as co-Lead Counsel the law firms of Glancy Prongay & Murray LLP and Holzer & Holzer LLC. *Id.*

## **V. AMENDMENT OF PLEADINGS**

The initial complaint in this action was filed on January 18, 2018, by a party other than the current Lead Plaintiff. Doc. 1. Plaintiffs filed an Amended Class Action Complaint on June 25, 2018. Doc. 29. The Parties reserve their rights to amend the pleadings and join additional parties in accordance with the Federal Rules of Civil Procedure and the Rules of this Court. In the event that Defendants' motion to dismiss is granted in whole or in part, Plaintiffs request the opportunity to file a second amended complaint.

1 **VI. EVIDENCE PRESERVATION**

2 Each of the Parties represents that it has complied, and will continue to comply, with the  
 3 PSLRA provision related to evidence preservation. 15 U.S.C. § 78u-4(b)(3)(C)(i).

4 **VII. DISCLOSURES**

5 Because this is a putative class action brought under Section 10(b) of the Securities Exchange  
 6 Act of 1934, all “discovery and other proceedings” are automatically stayed pursuant to the Private  
 7 Securities Litigation Reform Act of 1995 (“PSLRA”), and therefore no initial disclosures have taken  
 8 place in the action. 15 U.S.C. § 78u-4(b)(3)(B) (providing for an automatic stay of “all discovery and  
 9 other proceedings . . . during the pendency of any motion to dismiss”). As the Ninth Circuit has held,  
 10 the PSLRA’s automatic stay provision encompasses any “litigation activity relating to discovery,”  
 11 including, for example, initial disclosures under Federal Rule of Civil Procedure 26(a). *Medhekar v.*  
 12 *U.S. Dist. Ct. for N. Dist. of Cal.*, 99 F.3d 325, 328 (9th Cir. 1996).

13 Defendants have moved to dismiss the amended complaint with prejudice. “The Ninth Circuit  
 14 has interpreted the automatic stay on all discovery under the PSLRA as applying not only when a  
 15 motion to dismiss is pending, but from the filing of the action until ‘the court has sustained the legal  
 16 sufficiency of the complaint.’” *Brown v. Ambow Educ. Holding Ltd.*, 2014 WL 12487666, at \*1 (C.D.  
 17 Cal. Feb. 6, 2014) (quoting *SG Cowen Sec. Corp. v. U.S. Dist. Ct. for N. Dist. of Cal.*, 189 F.3d 909,  
 18 913 (9th Cir. 1999)); *In re Am. Funds Sec. Litig.*, 493 F. Supp. 2d 1103, 1105 (C.D. Cal. 2007) (same).  
 19 Because the Court has not sustained the legal sufficiency of the amended complaint in this matter, the  
 20 stay is in effect.

21 **VIII. DISCOVERY**

22 This action is a federal securities class action governed by the provisions of the PSLRA, and as  
 23 such is subject to a mandatory stay of discovery pending determination of the motion to dismiss.  
 24 Accordingly, no discovery has taken place in this action. The parties respectfully submit that it would  
 25 be premature to discuss the anticipated scope of discovery or to submit a detailed discovery plan at this  
 26 stage.

1 **IX. CLASS ACTIONS**

2 If Plaintiffs' allegations survive a motion to dismiss, the parties will hold their Rule 26(f)  
3 conference and propose a case management schedule, including a deadline for the filing of a motion for  
4 class certification. Plaintiffs anticipate they will seek class certification under Rules 23(a) and (b)(3) of  
5 the Federal Rules of Civil Procedure on behalf of a class consisting of all those who purchased or  
6 otherwise acquired Yelp securities on the open market between February 10, 2017 and May 9, 2017,  
7 inclusive, and were damaged thereby (the "Class"). Excluded from the Class are Defendants, the  
8 officers and directors of the Company, at all relevant times, members of their immediate families and  
9 their legal representatives, heirs, successors or assigns and any entity in which Defendants have or had  
10 a controlling interest. Defendants will assess class certification if and when Plaintiffs move.

11 **X. RELATED CASES**

12 There are no other cases related to this matter.

13 **XI. RELIEF**

14 **(a) Plaintiffs' Position**

15 Plaintiffs seek compensatory damages for themselves and the other Class members against  
16 Defendants, jointly and severally, in an amount to be proven at trial. Plaintiffs also seek an award of  
17 costs and expenses incurred in this action, including attorneys' fees and expert fees.

18 **(b) Defendants' Position**

19 Defendants deny that Plaintiffs and other putative Class members were damaged or are entitled  
20 to any relief.

21 **XII. SETTLEMENT AND ADR**

22 No settlement discussions have occurred, nor have the parties made any ADR efforts to date.  
23 This action is not a case assigned to the ADR Multi-Option Program. The parties anticipate they will  
24 explore the applicability of ADR, including, but not limited to, private mediation, if and when  
25 appropriate. The parties respectfully submit that a settlement conference is premature prior to  
26 resolution of Defendants' motion to dismiss.

1 **XIII. CONSENT TO MAGISTRATE JUDGE FOR ALL PURPOSES**

2 The parties do not consent at this time to having a magistrate judge conduct all further  
3 proceedings including trial and entry of a judgment.

4 **XIV. OTHER REFERENCES**

5 The parties do not believe the case is suitable for reference to binding arbitration or a special  
6 master. The parties agree that there is no need to refer the case to the Judicial Panel on Multidistrict  
7 Litigation.

8 **XV. NARROWING OF ISSUES**

9 The parties agree that it is premature to offer suggestions to expedite the presentation of  
10 evidence at trial. No party has requested bifurcation of issues, claims, or defenses. The parties are not  
11 presently aware of issues that can be narrowed by agreement or by motion, except for the motions set  
12 forth above, but they will raise any such issues as the litigation progresses.

13 **XVI. EXPEDITED SCHEDULE**

14 The parties agree that this is not the type of case that can be handled on an expedited basis.

15 **XVII. SCHEDULING**

16 The parties agree that it would be premature to set a schedule at this time beyond the pleading  
17 stage due to the mandatory stay of discovery pending the determination of the motion to dismiss under  
18 the PSLRA.

19 **XVIII. TRIAL**

20 The parties agree that it is premature at this point for the parties to estimate the length of the trial  
21 or set a trial schedule.

22 **XIX. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS**

23 Pursuant to Civil L.R. 3-15, the undersigned certify that as of this date, other than the named  
24 parties, there is no such interest to report.

25 Defendants filed the certification of interested entities or persons on August 2, 2018 (Doc. 33).

1 **XX. PROFESSIONAL CONDUCT**

2 All attorneys of record for the parties have reviewed the Guidelines for Professional Conduct  
3 for the Northern District of California.

4  
5 Dated: September 13, 2018

**GLANCY PRONGAY & MURRAY LLP**

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20 Dated: September 13, 2018

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*Attorneys for Defendants Yelp Inc., Jeremy  
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## **ATTESTATION**

I, Robert V. Prongay, am the ECF User whose identification and password are being used to file this **JOINT CASE MANAGEMENT STATEMENT**. In compliance with Civil L.R. 5-1, I hereby attest that Gilbert R. Serota has concurred in this filing.

Dated: September 13, 2018

## GLANCY PRONGAY & MURRAY LLP

By: s/ Robert V. Prongay  
Robert V. Prongay

## **PROOF OF SERVICE BY ELECTRONIC POSTING**

I, the undersigned say:

3 I am not a party to the above case, and am over eighteen years old. On September 13, 2018, I  
4 served true and correct copies of the foregoing document, by posting the document electronically to  
5 the ECF website of the United States District Court for the Northern District of California, for receipt  
6 electronically by the parties listed on the Court's Service List.

7 I affirm under penalty of perjury under the laws of the United States of America that the  
8 foregoing is true and correct. Executed on September 13, 2018, at Los Angeles, California.

*s/ Robert V. Prongay*

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Robert V. Prongay

## Mailing Information for a Case 3:18-cv-00400-EMC Azar v. Yelp, Inc. et al

### Electronic Mail Notice List

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### Manual Notice List

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- (No manual recipients)